



OFFICE OF THE DEPUTY COMMISSIONER - LEGAL MATTERS

LEGAL BUREAU BULLETIN

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I. SUBJECT: SEXUAL HARASSMENT IN THE WORKPLACE

II. QUESTION: What is Sexual Harassment in the workplace?

III. ANSWER: Sexual harassment in the workplace occurs when an unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature is made and:

- (1) submission to such conduct is made a condition of employment; **OR**
- (2) submission to or rejection of such conduct is used as the basis for decisions affecting the individual's employment; **OR**
- (3) such conduct interferes with an individual's work performance or otherwise creates an intimidating, offensive or hostile work environment.

IV. DISCUSSION:

A. Introduction

This bulletin was revised to provide updated instruction concerning sexual harassment in the workplace, and to expand the class of protected individuals to include applicants for employment and interns, both paid and unpaid.

If there are any questions after reading this bulletin, or you require more information, contact your designated Equal Employment Opportunity liaison or the Office of Equal Employment Opportunity, One Police Plaza, Room 1204, or by telephone at (646) 610-5330.

B. Definitions

Generally, sexual harassment is broken down into two different categories, *quid pro quo* (something for something), and hostile work environment.

1. ***Quid pro quo*** sexual harassment occurs where an individual's submission to, or rejection of, sexual advances is used as a basis for decisions affecting the terms and conditions of a person's continued employment, including promotions, transfers or overtime. Although quid pro quo harassment most typically involves supervisors, it can also arise from peer-to-peer conduct.
2. ***Hostile work environment*** sexual harassment occurs where any unwanted sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive working environment. The victim does not have to be the harassed person; rather, a hostile work environment claim can come from anyone affected by the offensive sexual conduct.

C. Conduct

Sexual harassment is a gender-neutral offense, meaning that sexual harassment can occur between males and females, as well as between persons of the same sex. Depending on the severity of the conduct, a single incident of inappropriate sexual behavior may be enough to rise to the level of sexual harassment. The conduct of the harasser must be unwelcome.

Listed below are the types of conduct that may constitute unlawful sexual harassment:

- Sexually suggestive remarks, jokes, pictures or gestures;
- Verbal abuse or harassment that is of a sexual nature or about a person's sexual orientation;
- Subtle or direct propositions for sexual favors; and/or
- Any unwanted or unnecessary touching, patting, or pinching.

D. Protected Individuals

Uniformed and civilian members of the New York City Police Department are protected against sexual harassment in the workplace by Title VII of the Federal Civil Rights Act of 1964, the New York State Human Rights Law, the New York City Human Rights Law and Department policy. These protections also extend to applicants for employment and to paid or unpaid interns.

E. Liability

The law is clear. Supervisors are not only responsible for maintaining a precinct or other workplace free from sexual harassment, but also for taking prompt corrective action on complaints. A “supervisor,” for liability determinations, are those individuals that have been empowered to take tangible employment actions against the victim. Moreover, because sexual harassment is barred by federal, State, and City law, a supervisor or employee found guilty of sexual harassment may not be represented by the Corporation Counsel nor indemnified by the City, and may be personally liable for money damages awarded by the courts. Additionally, the Department may also pursue disciplinary action against any subject officer up to, and including, termination.

The following are some observations by courts in examining police-related sexual harassment cases:

- A police department violated the Civil Rights Act when a supervisor repeatedly sexually harassed a female dispatcher (by sexual advances, lewd sexual comments, innuendoes and gestures). Of importance to the issue of liability was the agency head’s decision to ignore the dispatcher’s complaints instead of investigating them and taking action against the supervisor.
- A complaint filed by a police officer, who charged that she was intentionally treated differently from her fellow officers because of her sex, stated a cause of action under the Civil Rights Law against a supervisor who was the alleged instigator of sexual harassment. She also had an action against other supervisors who allegedly became participants in a pattern of discriminatory activity and against other supervisory personnel who failed to act when confronted with evidence of discriminatory activity on the part of other defendants.
- A hostile, abusive, and offensive working environment was created where a female police officer was subjected to “kissing, moaning, sighing and other disruptive noises transmitted over the police radio, and was the subject of a plethora of sexually offensive posters, pictures, graffiti, and pinups placed on the walls throughout the Police Department.”
- A police department was in violation of both Title VII of the Civil Rights Act and the New York City Human Rights Law where a lieutenant subjected a police officer to unwelcome sexual remarks and advances, displays of pornographic materials, and physical touching. The defendant lieutenant was personally liable for a portion of the damages awarded to the complainant.
- A supervisor’s bargaining with a subordinate officer wherein a better performance evaluation was offered in return for sexual favors was sufficient to prove quid pro quo harassment. The fact that the harassment involved persons of the same gender was irrelevant to the court’s assessment of liability.

V. CONCLUSION

It is the policy of the City of New York and the New York City Police Department that all employees are entitled to work in an environment free from unwanted sexual pressures and harassment. Anyone in violation of this policy is subject to Department disciplinary action, as well as personal liability.

Anyone looking for more information on how or when to file a complaint regarding sexual harassment should contact the Office of Equal Employment Opportunity or refer to Procedure 205-36 of the Patrol Guide. The Office of Equal Employment Opportunity can be reached by telephone at (646) 610-5330 or contacted directly at One Police Plaza, Room 1204.

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